IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 470 OF 2003.

Sharadchandra Shridhar Lohokare. ... Appellant.

Versus.

Shripad Krishnaji Joshi. ... Respondent.

Shri R.S.Apte i/by Shri A.A.Garge for the Appellant.

Shri N.P.Deshpande for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 28th July, 2006.

P.C.:

1. Heard Shri Apte for the Appellant. The Appellant is the original Defendant. Shri Apte submitted that the Appellate court has committed gross error by not framing proper points for determination arising in the Appeal and therefore, prejudice has been caused to the Appellant. He pointed out that the Appellate court has relied upon a sale deed to which the Appellant is not a party. He submitted that the compound wall in question cannot be of absolute ownership of the Respondent and in fact both the parties are joint owners of the compound wall.

2. I have considered the submissions. So far as the first submission is concerned, a perusal of the Judgment of the Appellate court shows that all the questions arising in the Appeal have been dealt with and considered on the basis of the oral and documentary evidence on record. Thus in my view though points for determination have not been framed specifically, no

prejudice is caused to the Respondent. The Appellate court has referred to the sale deed executed in favour of the Defendant's father in respect of House No.76/1 by Grampanchayat Rajgurunagar. After referring to the sale deed, the Appellate Court has found that even the said sale deed supports the case of the Respondent that he is the owner of the said wall. The Appellate Court has also referred to the document of title of the Respondent/Plaintiff.

3. On the basis of the appreciation of oral and documentary evidence on record, the Courts bellow have held concurrently that the Respondent has proved his ownership in respect of the said wall. No case is made out for interference. Second Appeal is dismissed.

Judge.